

7. DISADVANTAGED BUSINESS ENTERPRISE

BASIC REQUIREMENT

The grantee must comply with 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. Grantees also must create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.

AREAS TO BE EXAMINED

1. *DBE Program*
2. *DBE Goals and Reports*
3. *Procurement*
4. *Certification Process*
5. *DBE Complaints and Protests*

REFERENCES

1. [49 CFR Part 26](#), "Participation by Disadvantaged Business Enterprises in

Department of Transportation Financial Assistance Programs"

USEFUL WEBLINKS

[FTA DBE Website](#)

[DOT Office of Small and Disadvantaged Business Utilization \(OSDBU\)](#)

[OSDBU's Guidance for DBE Program Administrators](#)

[OSDBU and Minority Resource Center](#)

[DOT DBE Regulation Questions and Answers](#)

[Tips for Goal Setting](#)

[List of Transit Vehicle Manufacturers](#)

[Sample DBE Program](#)

QUESTIONS FOR THE REVIEW

1. *Has FTA conducted a DBE Compliance Review during the past two Federal fiscal years? If yes, when was the site visit? Is a review scheduled for the current fiscal year?*

EXPLANATION

As part of its project oversight functions, FTA periodically conducts DBE reviews of selected grantees.

Even if such a review is scheduled for the current Federal fiscal year or has been recently conducted, all questions in this section are still asked. If a DBE review has been recently conducted, obtain a copy of the most recent report (draft or final) for input into the triennial review.

REFERENCE

Input to triennial review

SOURCES OF INFORMATION

The reviewer will check OTrak to determine if a DBE review has occurred or has been scheduled and to analyze findings and corrective actions from completed DBE reviews. The regional civil rights officer (RCRO) will also have information on DBE review activities. Reports may be available at the regional office or from headquarters.

DETERMINATION

None

2. *Does the grantee meet the threshold for a DBE program?*
 - a. *If no, skip to Question 11.*
 - b. *If yes, has the grantee's DBE program been approved by FTA? If no, provide an explanation.*

EXPLANATION

Written DBE programs are required of FTA recipients of planning, capital, and/or operating assistance that will have contracting opportunities (excluding transit vehicle purchases) exceeding \$250,000 with those funds in a Federal fiscal year. Contracting opportunities are counted in the aggregate, and include FTA funded purchase orders, capital projects, professional services, TIFIA loan funded projects, and contracting activities of subrecipients. The DBE program plan is not an annual submission and grantees do not submit regular updates of their DBE programs. However, significant changes to the

programs must be submitted for approval. Grantees (particularly new grantees) that do not meet the threshold are not required to develop a written DBE program.

Grantees required to have a written program that are part of a local government may be allowed to submit a single plan to FHWA if it receives more funding from FHWA than from FTA. **The grantee still must submit transit-specific overall agency goals to FTA, if applicable.** (see Question 5).

REFERENCE

[49 CFR 26.21](#)

SOURCES OF INFORMATION

The reviewer will examine files for the grantee's DBE program and correspondence regarding the status of program approval. Many of these program plans may be dated in 1999, when the regulation first became effective. For grantees that indicate that they do not meet the threshold, the reviewer will verify this by examining grant amounts, milestone progress reports, and procurement lists. Purchases from FTA funded operating budgets, preventative maintenance budgets, and capital programs may exceed \$250,000 in FTA funds when aggregated. Include the contracting opportunities of a grantee's subrecipients when determining whether a grantee meets the threshold. If the local government submits a single plan to FHWA, the reviewer will confirm with the RCRO that a separate FTA program plan is not required.

DETERMINATION

A grantee is deficient if a program has not been submitted and it has \$250,000 of FTA funds in contracting opportunities or has not responded to FTA's request for additional information.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to submit its DBE program to the RCRO.

3. *Who is the grantee's DBE liaison officer (DBELO)? To whom does this person report for DBE matters? Is this a collateral duty assignment? If yes, do potential conflicts exist and how are they identified and resolved? Does the grantee have adequate staff to administer the program?*

EXPLANATION

For grantees that meet the threshold requiring that they have a DBE program, the grantee's chief executive officer (CEO) must designate a DBE liaison officer (DBELO) and adequate staff to administer the DBE program. The DBELO must have direct and independent access to the CEO concerning DBE matters.

Direct and independent access to the CEO does not mean that there has to be a direct reporting relationship. This means that the DBELO must not be required to get anyone's consent or sign-off or "go through channels" to talk and write personally to the CEO about DBE program matters. If the DBELO has a "dotted line" reporting relationship (in lieu of a direct reporting relationship) to the CEO for DBE matters, this direct and independent access should be verified through job descriptions, organizational charts, and evidence of direct and independent communication between the two individuals.

Care should be taken to avoid conflicts when assigning the DBELO as a collateral duty assignment. The DBELO performs an oversight function. Therefore, if, for example, the procurement director is made the DBELO on a collateral duty basis, there may be a potential conflict of interest. If such an arrangement exists, the grantee should be requested to provide an explanation of how such conflict of interest situations are resolved and/or handled on a day-to-day basis. Large grantees should have clear reporting relationships with no conflicts of interest. Small grantees often have limited personnel with shared roles.

In its Notice of Proposed Rulemaking of May 2010, USDOT called attention to the last section of 49 CFR 26.25, which requires that the recipient have adequate staff to administer the DBE program. They also noted that, "In times of budget stringency, it may be tempting to cut back on staff and other resources needed for certification, program oversight, and other key DBE program functions. This sentence emphasizes that it is a requirement of Federal law that the DBE program be adequately staffed to ensure compliance with Part 26."

REFERENCE

[49 CFR 26.25](#)

SOURCES OF INFORMATION

The reviewer will examine the DBE program submissions to the RCRO for the name and reporting relationship of the DBELO. The current DBELO may also be listed in the agency's contact information in TEAM-Web. The reviewer will consult the RCRO for any indications of past problems with staffing. During the site visit, the reviewer will confirm current staff assignments. An organization chart can indicate reporting relationships. A job description for the

DBELO can confirm responsibilities and reporting relationships.

The grantee's DBE program plan can indicate the staffing that should be in place to administer the program.

DETERMINATION

The grantee is deficient if the DBELO cannot demonstrate direct and independent access to the CEO.

A staffing problem or coordination problems among responsible offices could lead to a finding of deficiency. Consult with the RCRO prior to making this deficiency.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to provide to the FTA RCRO evidence of corrective actions taken to designate DBE responsibilities properly.

4. *Does the approved DBE program on file with FTA reflect the current organizational structure of the agency?*

EXPLANATION

Grantees are required to follow their approved DBE programs, and such programs need to be updated when significant changes occur. FTA has found in its DBE reviews that organizational changes have occurred and grantees have not updated their programs. A typical organizational change has been a revision to the position of the DBELO and the resulting reporting relationship to the CEO. FTA considers this to be a significant change to a grantee's DBE program that should be communicated to the RCRO for approval.

REFERENCE

[49 CFR 26.21](#)

SOURCES OF INFORMATION

The reviewer will examine the information gathered from Questions 2 and 3 along with interviews on site, and review a current organization chart and job description for the DBELO to determine if the DBE program on file with FTA is current.

DETERMINATION

The grantee is deficient if organizational changes that affect the DBE program have occurred and the DBE program on file with FTA has not been updated or resubmitted to FTA.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to submit an update of its DBE program to the RCRO for approval.

5. *Were overall goals submitted to FTA by August 1 preceding the appropriate fiscal year? Did the grantee conduct a consultative process in setting these goals? Did the grantee publish its goals for 45 days in general circulation media, available minority focused media, and trade association publications prior to submission to FTA?*

EXPLANATION

Overall agency goals are required of FTA grantees receiving planning, capital, and/or operating assistance that project contracting opportunities (excluding transit vehicle purchases) exceeding \$250,000 with those funds in any Federal fiscal year. Beginning with FY 2011, grantees will submit their overall goals every three fiscal years in lieu of each fiscal year. If a grantee projects that it will meet the threshold in any of the three years in its cycle, it is to submit a goal covering that three-year period. FTA provides a document on its website indicating which fiscal year each grantee is required to make this submission. Waivers may be sought by grantees from RCROs as appropriate for goal submissions.

Contracting opportunities are counted in the aggregate, and include FTA funded purchase orders, capital projects, professional services, TIFIA loan funded projects, and contracting activities of subrecipients. Overall goals should be calculated as a percentage of all FTA funds (exclusive of funds to be used for the purchase of transit vehicles) that the grantee will expend in FTA-assisted contracts during the period covered. With prior FTA approval, grantees may also be permitted to express an overall goal as a percentage of funds for a particular grant and/or project. An example of this may occur with a major project such as a New Start project.

Overall DBE goals must be based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on FTA-assisted contracts ("relative availability of DBEs"). The goal must reflect the grantee's determination of the level of DBE participation the grantee would expect absent the effects of discrimination. Grantees cannot rely on either the 10 percent aspirational goal at the national level, or the previous goal, or past DBE participation rates without reference to the relative availability of DBEs in the market.

Overall goals must be submitted to FTA for review by August 1 preceding the Federal fiscal year in which the goal submission is due. The submittal must include a description of the methodology used to establish the goal and other items detailed in 49 CFR 26.45. FTA will review the submittals and advise the grantee if the overall goal has not been calculated correctly or if the method used for calculating the goal is inadequate. If so, FTA may, after consulting with the grantee, adjust the overall goal or require the grantee to make the adjustment.

Note: For grantees in the states of Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington, the 9th Circuit Court has issued a decision that affects DBE programs [*Western States Paving Co. v. State of Washington Dept. of Transportation*, 407 F. 3d 983 (9th Cir. 2005)]. For grantees in these states a disparity analysis must be completed before race conscious goals can be established. Consult with the RCRO to determine the appropriate approach for grantees in these states.

In establishing an overall goal, grantees must provide for public participation. This public participation must include the following steps in this order:

- Consultation with minority, women's, and general contractor groups, community organizations, and other officials or organizations that could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and a grantee's efforts to establish a level playing field for the participation of DBEs.
- A published notice announcing the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the principal office for 30 days following the date of the notice, and informing the public that comments on the goals will be accepted for 45 days from the date of the notice. The notice must include addresses (including the FTA RCRO's address) to which comments may be sent. The notice must be published in general circulation media, minority-focused media, and trade association publications. Publication of DBE goals on the entity's website or any website is not sufficient to meet the publication requirement.

Because of the 45-day requirement for publication, a grantee must publish its goal no later than June 15.

REFERENCE

[49 CFR 26.45](#)

[FTA schedule for three-year goal submittal](#)

SOURCES OF INFORMATION

The reviewer will examine DBE files for correspondence regarding overall DBE goal submittals and public participation (e.g., evidence of consultation with interested parties and copies of DBE public notices with proof of publication). The reviewer will check FTA's DBE website to verify which Federal fiscal year the grantee is to submit its three-year goal. During the site visit, the reviewer will obtain any outstanding materials (e.g., goal submission). The reviewer will evaluate and verify contracting opportunities if the grantee has indicated that it will not be submitting an overall goal because it does not meet the threshold for goal submission.

DETERMINATION

The grantee is deficient if overall DBE goals were not submitted to FTA by August 1 (or by another date established by FTA based on an extension request).

The grantee is deficient if the goal setting process did not include a public participation process.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to submit to the FTA RCRO its overall DBE goal or adjusted goal and implement a procedure to ensure that future goals will be submitted by August 1.

The grantee will be directed to provide to the FTA RCRO a revised public participation process and documentation of the implementation of the process.

6. *Has the grantee submitted the Uniform Report of DBE Awards or Commitments and Payments semi-annually? Does the report include the contracting opportunities of subrecipients?*

EXPLANATION

Each grantee that meets the threshold requiring it to have a DBE program is also required to submit a Uniform Report of DBE Awards or Commitments and Payments semi-annually. The report addresses the contracting opportunities of the grantee and its subrecipients. It includes information on awarded and completed contracts; **those that included DBE participation, as well as those that did not**. An electronic version of this report is available at www.fta.dot.gov/dbe. Reports are due by June 1 (for the period covering October 1 – March 31) and by December 1 (for the period covering April 1 – September 30).

REFERENCE

49 CFR 26.11
[DBE Semi-Annual Reporting Form](#)

SOURCES OF INFORMATION

The reviewer will examine the DBE files and TEAM-Web for correspondence regarding semi-annual report submittals. During the site visit, the reviewer will obtain any outstanding materials; verify that the form submitted is the form noted above, and that it has not been modified by the grantee. During the site visit, the reviewer will obtain information on how subrecipient contracting activities are included in the grantee's reports. Beginning in 2011, grantees have the ability and are encouraged to submit these reports in TEAM-Web.

DETERMINATION

The grantee is deficient if it has not submitted the reports semi-annually, has not submitted them timely, or is not using the current form.

The grantee is deficient if its reports do not include all applicable FTA funded contracting activity of itself and any subrecipients.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to submit to the FTA RCRO the Uniform Report of DBE Awards or Commitments and Payments semi-annually (due June 1 and December 1), along with an implemented procedure to ensure future timely and correct submissions.

The grantee will be directed to submit to the FTA RCRO procedures for including all applicable FTA funded contracting activity, including the activity of subrecipients, in future reports.

7. *Since the last review, how many times did the grantee award a contract to a firm that did not meet the specified DBE solicitation goal? For these instances, how did the grantee determine if "good faith efforts" were sufficient?*

EXPLANATION

Not every FTA funded contract is required to have a DBE goal. However, prior to awarding a contract to a firm that did not meet a specific DBE solicitation goal; the grantee must determine whether the efforts the firm made to obtain DBE participation were "good faith efforts" to meet the goals. Examples of efforts the grantee may consider include: whether the contractor attended any pre-bid meetings held by the grantee to inform DBEs of contracting opportunities or whether the contractor provided written notice to a reasonable number of specific DBEs that their interest in the contract was being solicited in sufficient time to allow participation. A more extensive list of examples is provided in Appendix A to 49 CFR Part 26.

It is important to note that DBEs are certified to perform certain types of work. To receive credit for good faith efforts and to count towards goal attainment, DBEs named must be certified to do the scopes of work that they are contracted to perform.

REFERENCE

[49 CFR 26.53](#) and Appendix A

SOURCES OF INFORMATION

At the site visit, the reviewer will ask the grantee to explain its methods for determining “good faith efforts.” During the review of the procurement area, if any solicitations include a DBE goal, the reviewer will document the goal and the DBE commitment stated in award documents. The reviewer will determine how the grantee verifies that DBEs are certified for the type of work that they are being named for prior to award. For a procurement where the awarded DBE amount is less than the goal stated in the solicitation, the reviewer will examine the grantee’s documented good faith efforts review.

DETERMINATION

The grantee is deficient if it cannot describe the methods, or applicable procurement files do not include documentation of the consideration of “good faith efforts.” The grantee is deficient if it does not verify that DBEs are certified to perform the type of work that they are being named for prior to award.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to submit to the FTA RCRO a method for determining “good faith efforts” and/or evidence that it has included documentation in applicable procurement files.

8. *Has the grantee included required prompt payment and return of retainage clauses in its procurement documents?*

EXPLANATION

Grantees must have a contract clause that requires primes to pay subcontractors for satisfactory performance of their contract work no later than 30 days from receipt of payment for such work from the grantee. Grantees must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor’s work is satisfactorily completed. The grantee must use one of the following methods to comply with this requirement:

- Decline withholding of retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.

- Decline withholding of retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 30 days after the subcontractor’s work is satisfactorily completed.
- Withhold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after grantee’s payment to the prime contractor.

For purposes of the retainage requirement, a subcontractor’s work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the grantee. When a grantee has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

A grantee’s DBE program must provide appropriate means to enforce prompt payment. The grantee should be able to document **implemented** processes for monitoring and enforcement to ensure contractor compliance with prompt payment and prompt return of retainage requirements.

REFERENCE

[49 CFR 26.29](#)

SOURCES OF INFORMATION

The reviewer will examine procurement files for information on the inclusion of appropriate prompt payment and return of retainage clauses and policies, and note whether the clause is included in Exhibit 6.1 Required Third Party Contract Clauses in the review package. The reviewer will review the grantee’s DBE program plan for methods described for monitoring and enforcement and review contract administration or contract compliance documentation for verification of the grantee’s implementation of monitoring and enforcement.

DETERMINATION

The grantee is deficient if it has not included appropriate prompt payment and return of retainage clauses in its contracts. The grantee is deficient if it does not have and/or has not implemented a monitoring and enforcement process for ensuring prompt payment and return of retainage.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to submit to the FTA

RCRO documentation of efforts to ensure compliance with prompt payment and return of retainage requirements.

9. *How does the grantee monitor contractors and subrecipients to ensure that DBE obligations are fulfilled? What enforcement mechanisms does the grantee use for DBE requirements? Does the grantee require contractors to obtain approval from its DBELO prior to substituting a DBE firm after contract award?*

EXPLANATION

Recent investigations by the U.S. DOT Office of the Inspector General have raised concerns about the administration of DBE programs. Grantees must have a process to monitor contractors and subrecipients for compliance with applicable DBE requirements. Grantees must implement appropriate mechanisms to ensure compliance with the DBE program by all program participants (i.e., applying legal and contract remedies available under Federal, state, and local law). These mechanisms must be set forth in the grantee's DBE program. A grantee must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by DBEs.

Prior to awarding a project with a DBE goal to a contractor, the grantee is required to collect from the awardee the names, dollar amounts, and types of work for each DBE. This information forms the DBE commitment (not goal) of the awarded contract. The grantee should document efforts to monitor that primes are maintaining their commitments to use the DBEs noted in contract award documents for the types and dollar amounts of work detailed.

The grantee must also monitor any requests by contractors to substitute DBEs after a contract is awarded. The contractor must have a bona fide reason for the request to substitute the firm and must make "good faith efforts" to retain another certified DBE firm for the same amount of work.

The grantee should demonstrate that it provides oversight of subrecipients to ensure inclusion of required contract clauses and monitoring of contractors for adherence to commitments.

REFERENCE

49 CFR 26.37
49 CFR 26.53

SOURCES OF INFORMATION

The reviewer will examine the grantee's DBE program to identify the methods that the grantee states it will use to monitor contractors and subrecipients. At the site visit, the reviewer will have the grantee provide examples of actual monitoring activities/reports from the past three years.

DETERMINATION

The grantee is deficient if it cannot demonstrate how it is monitoring its contractors and subrecipients.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to submit to the FTA RCRO documentation that it has begun monitoring contractors and subrecipients. The grantee will be directed to submit to the FTA RCRO documentation that it has updated the DBE program to reflect current monitoring procedures.

10. *How does the grantee monitor projects to ensure that DBEs are actually performing work committed to at the time of contract award?*

EXPLANATION

Grantees must implement appropriate mechanisms to ensure compliance with the DBE program by all program participants (i.e., applying legal and contract remedies available under Federal, state, and local law). These mechanisms must be set forth in the grantee's DBE program. A grantee must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by DBEs.

Recent investigations by the U.S. DOT Office of the Inspector General have raised concerns about the administration of DBE programs. Specifically, it has been found that DBE certified firms are serving as "fronts" for ineligible firms. A grantee's responsibility for monitoring DBE participation does not end with the certification process.

The reviewer should ask if the grantee implements efforts such as conducting site visits to observe that DBEs are actually performing the work on contracts, reviewing subcontract agreements, checking payroll records to ensure that the employees working on the job are actually employees of the DBE, and looking at the title to equipment used on the project to ensure that the equipment is owned or leased by the DBE.

REFERENCE

49 CFR 26.37

SOURCES OF INFORMATION

The reviewer will examine the grantee's DBE program to identify the methods that the grantee states it will use to monitor that DBEs are actually performing the stated work on contracts. At the site visit, the reviewer will ask the grantee to provide examples of actual monitoring activities/reports from the past three years.

DETERMINATION

The grantee is deficient if it cannot demonstrate how it is monitoring that DBEs are actually performing the stated work.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to submit to the FTA RCRO documentation that it has begun monitoring that DBEs are actually performing the stated work. The grantee will be directed to submit to the FTA RCRO documentation that it has updated the DBE program to reflect current monitoring procedures.

11. *For procurements of transit vehicles (e.g., buses, railcars) conducted since the last review, did the grantee obtain DBE certifications from the transit vehicle manufacturer (TVM) with the bids/proposals submitted?*

EXPLANATION

All grantees must require that each TVM, as a condition of being authorized to bid on transit vehicle procurements funded by FTA, certify that it has complied with the requirements of 49 CFR 26.49. The grantee is required to include a provision in its bid specifications requiring the certification from TVMs as a condition of permission to bid. The certification should reference 49 CFR Part 26 (not Part 23). Typically, dealers and manufacturers of unmodified, mass produced vehicles such as vans and sedans are not currently classified as TVMs for the DBE regulation. Contracting opportunities for modification of mass produced vehicles after purchase should be included in a grantee's overall agency goal calculation. A list of TVMs that have submitted required DBE information to FTA is available at the FTA website: www.fta.dot.gov/dbe. Evidence that this website has been checked to validate the TVM certification, prior to award, should be included in applicable procurement files.

Please note that FTA is working with USDOT to formalize the definition of TVM. In particular, grantees using FTA funds for the purchase of ferries should include the contracting opportunities associated with these procurements in their overall agency goal-setting methodology.

REFERENCE

49 CFR 26.49
FTA's DBE Website

SOURCES OF INFORMATION

At the site visit, the reviewer will examine grantee transit vehicle procurement files for signed TVM certifications and note whether the grantee obtained the certification in Exhibit 6.2 Required Certifications, Reports, and Forms in the review package.

DETERMINATION

The grantee is deficient if it does not include a provision in its bid specifications requiring TVM certifications, if the files do not contain TVM certifications from successful bidders, or if the TVM certification is out of date (references Part 23 instead of Part 26).

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to submit evidence to the FTA RCRO that it has included a provision in applicable bid specifications requiring current TVM certifications and/or obtained TVM certifications from successful bidders.

12. *Is the grantee signatory to its state's Unified Certification Program (UCP)?*
13. *Does the grantee certify DBEs itself? If yes, does the grantee:*
- *use the correct application form, instructions and document checklist;*
 - *conduct site visits prior to certification; and*
 - *obtain annual affidavits from each certified DBE affirming that the DBE continues to meet the eligibility criteria of the regulation?*

EXPLANATION

The regulations require that all DOT grantees participate in a UCP within their state. Even if a grantee does not certify DBEs, it is required to be signatory to its state's UCP agreement. Any grantee that meets the minimum threshold requirements for a DBE program must ensure that only firms certified as eligible DBEs, consistent with the standards of Subpart D, participate as DBEs in their program.

The certification procedures help to reduce fraud and ensure that only eligible DBEs are certified and participate in the DBE program. The regulations give specific guidance on determining eligibility based on

group membership or individual disadvantage, business size, ownership, and control. The correct instructions, form, and document checklist to be used for DBE certification are located at USDOT's website. Certifying grantees are to use these documents unmodified, unless such modifications were approved by USDOT.

The regulations also require that the certifying agency either conduct site visits, or, if the DBE is located out of state, obtain evidence that a certification site visit was conducted prior to the initial certification. A DBE's initial certification must be from its home state's UCP. Further, the regulations require that annual affidavits be obtained from each certified DBE affirming that the DBE continues to meet the eligibility criteria of the regulations.

REFERENCE

[49 CFR 26.61-26.91](#)

[USDOT DBE Certification Form](#)

SOURCES OF INFORMATION

The reviewer will ask the grantee to provide information regarding its participation in a UCP and provide a copy of the signed UCP agreement.

If a grantee certifies DBEs, the reviewer will obtain a copy of its DBE application and instructions to verify that the correct form is being used by comparing it with the USDOT form noted in the above explanation. The reviewer will review two or three DBE certification files to confirm that the certification procedures are in place. Certification files should show evidence of a site visit prior to certification and annual affidavits of continued DBE eligibility. The reviewer will examine a sample of annual affidavits for DBE firms that have performed work during the past three years and record the dates that these were submitted.

DETERMINATION

The grantee is deficient if it is not participating (through at least being signatory to the state's agreement) in the UCP.

The grantee is deficient if it certifies DBEs and is not using the correct forms or has not followed the procedures.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to submit to the FTA RCRO a description of how it will participate in the UCP and copies of signed UCP agreements. The grantee will be directed to submit to the FTA RCRO

evidence that it has implemented standards and procedures to determine initial and continued DBE eligibility in accordance with 49 CFR Part 26.61-26.91 and that it has updated the DBE program to reflect the new procedures.

In addition to the RCRO, corrective actions to deficiencies related to these certification questions will be submitted to FTA's DBE Technical Lead, 1200 New Jersey Ave., SE, East Bldg., 5th Floor, Washington, DC 20590.

- 14.** *Since the last review, did the grantee receive any complaints or procurement protests alleging that it did not comply with the DBE regulations? What is the grantee's process for handling and resolving such complaints? Do the complaints indicate any problems with the DBE program?*

EXPLANATION

Any person who believes that the DBE regulations have been violated may file a written complaint.

REFERENCE

[49 CFR 26.103](#)

SOURCES OF INFORMATION

The reviewer will obtain information regarding complaints from headquarters, the RCRO, or the grantee. At the site visit, the reviewer will ask the grantee to make available a listing of all DBE-related complaints or protests during the past three years and the disposition of such complaints. Review individual complaint files. Discussions with responsible officials and employees may be necessary.

DETERMINATION

The grantee is deficient if complaints indicate that it is violating DBE program regulations or if the complaints do not receive a response.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to submit evidence that it has resolved any outstanding complaints and/or implemented procedures for handling DBE complaints to the FTA RCRO.